IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1322 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ZINABHAI R MAKWANA

Versus

PRESEDENT INDUSTRIES

Appearance:

MR BA VAISHNAV for Petitioner

SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/09/96

ORAL JUDGEMENT

1. This appeal was fixed for final hearing with the consent of the learned advocates appearing for the parties on 28.11.1995. During the course of hearing this court found that it would be just and proper and equitable to summon Dr.V.R.Patel with further direction to PI, Naroda Police Station to remain present with the original postmortem report. Such interim order was

passed by this court on Ist May, 1996 and in response to service of summons, Police Constable--J.U.Waghela, Buckle No.6142, Naroda Police remained present in the court on 19th June, 1996 along with original Postmortem report and Dr.V.R.Patel also remained present before the court.

2. Primary facts giving rise to the present first appeal are set out herein. Appellant-Zinabhai Rupabhai Makwana claimant before the Commissioner, Workmen's Compensation filed an application to recover compensation of Rs.83,192/- against the respondent-employer contending that his wife who was employed in the employment of respondent sustained injury during the course of employment and as a result thereof she died. It was averred that the accident took place on 5th July, 1990 within the premises of the respondent and on 8th July, 1990 Champaben, wife of the claimant expired.

3. The Commissioner, Workmen's Compensation, Ahmedabad by judgment and order, dated 25.10.94 rejected the application for compensation after recording a finding that the wife of the claimant was the workman employed by the respondent and on the date of accident she was in service and that she received injury. The main ground on which the application was rejected was that the claimant has failed to produce and prove the original postmortem report as well as inquest report by examining the doctor. He also found that only xerox copy of the postmortem report, dated 17th July, 1990 was produced and that based on such zerox copy, the postmortem report could not be admitted to be the evidence nor could any amount be awarded to the claimant.

4. Being aggrieved by the aforesaid judgment and award of the Commissioner, Workmen's Compensation, the claimant has preferred this First Appeal before this court.

5. Since the aforesaid ground made by the Commissioner, Workmen's Compensation was the only ground for rejecting the claim, this court by aforesaid order, dated 5.5.96 with the consent of learned advocates appearing for the parties, tried to do complete justice between the parties as it was clear that the original postmortem report was in fact available in the office of the PI, Naroda and that doctor could also be called.The second minor ground for rejecting the claim was that the wife of the claimant herself was negligent and therefore she was not entitled to any compensation.

6. On 19.6.96 the original postmortem report was

produced before the court by the aforesaid Police Constable and Dr.V.R.Patel who was present in the court explained the report to the court because xerox copy thereof was not fully legible and was not capable of being properly understood.

7. The various items of postmortem report which were not legible in the xerox copy but it was written by Dr.V.R.Patel who could easily decipher the same are reproduced herein:

"Item No.17: Two small round bone deep holes present on each Parietal eminents of head, each of 0.5 cms diameter. These wounds are made as a part of treatment.

Item No.18: Fracture on 3rd and 4th Cervical Vertebra present.

Item No.18A: Ante-mortem

Item No.19.3: Congested.

Item No.22: There is fracture of 3rd and 4th Cervical Vertebra with contusions and lacerations of intervertebral disc between the two vertebra. The spinal cord is lacerated and contused in its anterior 2/3 muscles around the fracture are bruised and ecchymosed.

Item No.23: The death is due to cardio respiratory failure due to injury to spinal cord. The death is within 24 hours of P.M. examination. The injuries found are consistent with the history given by the police"

8. From the aforesaid reproduction of substantial items of postmortem report as explained by Dr.V.R.Patel, it is established that the wife of the claimant received fracture of 3rd and 4th cervical vertebra. It is also found that fracture of said verterbra with contusions and lacerations of intervertebral disc between the two vertebra. It was also found that spinal cord is lacerated and contused in its anterior 2/3rd muscles around the fracture are bruised and ecchymosed.

9. Aforesaid clear reading of original postmortem note leaves no room for doubt that the wife of the claimant died of fracture of 3rd and 4th cervical

vertebra and that the death was due to cardio respiratory failure due to injury to spinal cord. The injury to the spinal cord is undoubtedly caused to the wife of the workman while in service and performing her duties and therefore injuries received by her can be said to be injuries caused in the course of employment. Obviously therefore the employer is primafacie liable to pay the workman compensation as per the provisions of said Act.

10. Mr.R.R.Tripathi, learned counsel appearing for the employer however very vehemently submitted before the court that the claimant--husband of the injured wife who ultimately died can not be said to be the "dependent" of the workman within the meaning of section 2(d) of the Workmen's Compensation Act, 1923. Said definition reads as under:

"2(d) "dependent": means any of the following relatives of a deceased workman, namely--

(i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother, and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of workman at the time of his death--

(a) widower,

(b) a parent other than a widowed mother,

(c) a mminor or illegitimate son, an unmarried illegitimate daughter of a daughter legitimate for illegitimate if married and a minor or if widowed and a minor;

(d) a minor brother or an unmarried sister or a widowed sister if a minor;

(e) a widowed daughter-in-law;

(f) a minor child of a predeceased son;

(g) a minor child of a predeceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive'

11. Based on the aforesaid provision it is submitted by the learned counsel for respondent that the workman can never be said to be the dependent and therefore the husband was not entitled to file the application for compensation.

12. The submission is rather too technical and if definition of section 2(d) is read the widest amplitude in which it was intended to be read, said submission shall have to be brushed aside. However, in the present case even this technical objection nolonger survives because the claimant has with minimum and reasonable despatch moved the CA No.4946/96 for impleading the minor sons and daughters of the workman and the claimant who undoubtedly and without any objection can be said to be the dependent of the workman. Said CA is granted by this court and minor sons and daughters of the deceased workman are already impleaded as party petitioners in the present petition and therefore their claim for workman compensation can not be denied on such jejune and untenable ground.

13. Mr.Tripathi, Ld.counsel for the employer submitted that in fact the wife expired because of her own contributory negligence which contributed to the accident of the workman injured and therefore she can not through her husband, sons and daughters claim the workman compensation. Finding of the Commissioner, Workman Compensation on this point is no doubt in favour of the employer but is on application of well established standards of appreciation of evidence not tenable in law and shall have to be rejected. Even otherwise also under the Workman Compensation Act, 1923 the concept of negligence rarely comes to play. If the workman injury is caused during the course of employment the liability to pay compensation undoubtedly arises and therefore the Commissioner of Workman Compensation was not justified in resorting to ordinary principle of law of Tort of contributory Negligence which has no application even as per the decision in Harris vs Associated Portland Cement Manufacturing Ltd reported in 1939 AC 71.

14. Lastly it was submitted before this court that there is no nexus between the accident and the death of wife of the claimant. In fact, even after when she fell down while on duty she has received workman injury, she died after three days, i.e. on 8th July, 1990. Passage of time between the occurrence of workman injury and death of workman does not necessarily establish that there was no nexus between the accident and the death of workman. In the absence of any event intervening which can be said to be the cause of death of the workman, and in view of the fact that the finding of postmortem report that the workman died because of cardio respiratory failure due to injury to spinal card, it shall have to be accepted that the injury was only cause of death of the workman. However, the amount of compensation which is

claimed by the wife(workman) is not worked out as per the provisions of Section 4 read with Schedule 4 of the Act. This is worked out as per the said schedule and the amount reached to Rs.54,906.72ps and the claimants are entitled to said workman compensation.

15. The aforesaid amount of compensation was directed to be paid by the employer to the minor sons and daughters of the deceased workman. He is directed to deposit the said amount by way of account payee cheque in the name of Registrar of this Court within six weeks from today and after distributing amount of Rs.15,000/- in all to the sons and daughters of the deceased workman the balance amount is directed to be invested by way of FDRs in any nationalised bank for a period of five years with direction to pay the accumulated interest and the principal amount to the said heirs and LRs in equal proportion by the Registrar by account payee cheque.

16. In the result, FA succeeds. The judgment and award of the Commissioner, Workman Compensation is hereby quashed and set aside and Workman Compensation Application No.188/90 is granted and allowed to the aforesaid extent. No costs.

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